

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND EARL KELLER,

Defendant-Appellant.

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UNPUBLISHED

July 19, 2007

No. 266804

Emmet Circuit Court

LC No. 05-002465-FH

Before: Meter, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted by a jury of false pretenses with intent to defraud of property valued at over \$20,000, MCL 750.218(5)(a), and was sentenced as a third habitual offender, MCL 769.11, to three to ten years' imprisonment and was ordered to pay restitution. He appeals as of right. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts**

Defendant suffered a serious chemical burn on his hand. At the time of the burn he was employed at Meyer Hardware in Petoskey, Michigan. Defendant initially claimed the injury occurred when battery acid splashed on him while he was helping a customer unload a car battery. But the store's surveillance tape did not show defendant having any contact with a customer with a car battery. Defendant later changed his story and said he was burned while using chemicals to clear a blocked drain in the bathroom of Meyer Hardware.

At trial, it was the theory of the prosecution that the injury could have been self-inflicted and that "defendant wanted time off work with pay. He wanted Worker's Compensation through Meyer Hardware to pay for it." It was undisputed at trial that defendant's worker's compensation claim was denied and defendant's employer did not pay for any of defendant's medical bills. The parties stipulated to the amount of medical expenses incurred.<sup>1</sup> The medical

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<sup>1</sup> The stipulation merely stated that the parties "stipulate and agree as follows:

1. That the amount of services received by Defendant from Northern Michigan Hospital was \$17,435.00 and rehabilitation provided by Northern Michigan

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providers were never paid for their services. After incurring the debts, defendant filed for bankruptcy.

The jury convicted defendant as charged and defendant appeals.

## II. Analysis

Defendant first claims the evidence was insufficient to support the jury verdict because no evidence was presented that, in rendering treatment, the victims (i.e., the medical providers) detrimentally relied on defendant's misrepresentations as to how the injury occurred. We agree.

In analyzing the sufficiency of the evidence, this Court reviews the evidence de novo in the light most favorable to the prosecution. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). This Court does not consider whether any evidence existed that could support a conviction, but instead determines whether a rational trier of fact could have found that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Under this deferential standard, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"The elements of the crime of false pretenses are: (1) a false representation as to an existing fact, (2) knowledge by defendant of the falsity of the representation, (3) use of the false representation with an intent to deceive, and (4) detrimental reliance on the false representation by the victim." *People v Wogaman*, 133 Mich App 823, 826; 350 NW2d 816 (1984).

In reviewing the element of detrimental reliance to determine whether a rational trier of fact could have found that the evidence proved the element beyond a reasonable doubt, we find that it did not. Testimony at trial revealed only that the medical facilities treating defendant's injury believed that it occurred on the job. Their paperwork indicated that there was no potential coverage for any treatment other than worker's compensation. However, no evidence was presented as to whether the medical treatment provided to defendant would have been either different or withheld if defendant's injury was self-inflicted rather than incurred during the course of his employment. No evidence was presented that the medical providers relied on defendant's story of how the burn occurred when they agreed to incur the expense of treating his injury.

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Hospital in the amount of \$234.00, for a total of \$17,669.00 for a total of \$17,669.00.

2. The amount of services provided to Defendant by Bay Street Orthopedic totaled \$4,100.00.

3. The combined total of services received by Defendant was \$21,769.00.

Finally, there was no testimony from the victims that they suffered financial loss due to their treatment of defendant due to his false representation that the injury had been incurred in the course of his employment. This Court must consider whether the evidence presented at trial could have lead a rational trier of fact to find that the element of detrimental reliance was proven beyond a reasonable doubt. *Wolfe, supra* at 513-514. Here, a reasonable jury would have had no way of knowing whether the medical treatment rendered was based upon defendant's misrepresentation of how the injury occurred or was rendered because defendant presented with a serious injury. Certainly the victims suffered a loss because they provided medical care to defendant and were not paid for their services. However, no causal link has been established between the provision of that care and defendant's false statements about how the injury occurred.

Plaintiff argues that the medical care provided to defendant would not have been nearly as extensive had the medical providers known that they would not be paid by worker's compensation. Although that may be true, there is nothing in the record to support the contention. Nothing in the evidence established that defendant's treatment would have been any different or withheld had the medical providers known that the injury was not work related and that worker's compensation coverage would not be available. Defendant's conviction was not supported by sufficient evidence.

Next, defendant argues that the trial court's order granting restitution was improper. Given our determination that defendant's conviction was not supported by sufficient evidence, we agree that the trial court erred in ordering restitution.

Defendant's conviction is reversed and the order of restitution is vacated.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood